

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

October 1, 2009

A meeting of the Board of Environmental Protection was held on Thursday, October 1, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

**Board:** Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, Frank Woodard and Nancy Ziegler

**Absent:** P. Andrews Nixon, Matt Scott, and Lissa Widoff

**Staff:** Matt Sica, Dept. of Health and Human Services  
Mike Mullen, Bureau of Land and Water Quality  
Andy Fisk, Bureau of Land and Water Quality

**Others:** Davie P. Littell, Commissioner  
Mary Sauer, Assistant Attorney General  
Cindy Bertocci, BEP Executive Analyst  
Terry Hanson, BEP Administrative Assistant

***(Meeting adjourned at approximately 12:30 p.m.)***

**BOARD TO CONVENE AT 9:00 A.M. FOR A PUBLIC HEARING IN THE MATTER OF:**

CHAPTER 263, COMPREHENSIVE AND LIMITED ENVIRONMENTAL LABORATORY CERTIFICATION RULES  
// REPEAL AND REPLACE

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**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:**

Chemical Safety Reform: U.S. Environmental Protection Agency's (EPA) Regional Administrator recently announced support and principles for revisions to the Federal Toxic Substances Control Act (chemical safety reform). Commissioner Littell noted that TSCA has only restricted the use of 5 chemicals since its enactment in 1976. It is anticipated that there will be discussion related to the principles enacted under the chemical safety reform statutes adopted by Maine and Washington State.

Green House Gas: EPA will move forward with regulation of major stationary sources (sources emitting more than 25,000 tons of greenhouse gases) under its existing Clean Air Act authority. These sources will be regulated through the new source review provision. We expect EPA will adopt standards for energy efficiency on large sources of air pollution (exempting small business and farms).

New England Governor's & Eastern Canadian Premiers (NEGECP): Commissioner Littell provided Board members with copies of resolutions signed at the recent New England Governor's & Eastern Canadian Premiers conference. He noted that many issues eventually addressed in regulations are the out-growth of resolutions negotiated at the regional level (e.g. mercury reduction and climate change).

General Motors (GM): Commissioner Littell and the other New England Environmental Commissioners and Secretaries are working on a letter addressed to President Obama expressing concern over the possible bankruptcy of GM. Auto manufacturers entered into an agreement with EPA to provide funding for the collection of mercury switches before cars are smelted. Because GM's market share is over 50% of that market, bankruptcy could seriously jeopardize the collection program. The Department of Justice responded by indicating that it is considering the inclusion of funding for the collection program as part of the bankruptcy liability for GM.

Informational Handouts: The Commissioner provided Board members with an article entitled "An Economic Perspective", written by Robert Stavins, Director of Harvard Environmental Economics Program. The article discusses the Waxman-Markey bill as passed by the House.

- Board members received a copy of a September 2<sup>nd</sup> "State Voice" letter to Senators Boxer and Kerry concerning recommendations to effect greenhouse gas reductions and protect against climate change. All nine states participating in

regional cap and trade initiatives endorsed this letter and the general recommendations for federal climate legislation.

- Commissioner Littell highlighted correspondence between state Environmental Commissioners and Secretaries to EPA Administrator Jackson concerning a replacement rule for the Clean Air Interstate Rule. The letter discussed a commitment to work to address pollutant transport and ozone non-attainment and suggested a three step framework to address the requirements of the Clean Air Act including state-by-state reductions, regional trading programs for nitrogen oxide (NOx) and sulfur dioxide (SO2) emissions, and unit specific performance standards for fossil fuel-fired units.

Commissioner Littell discussed some major points of the letter to the EPA Administrator on behalf of the Ozone Transport Commission related to achieving ozone and Particulate Matter (PM 2.5) National Ambient Air Quality Standards.

- Ozone Levels: EPA announced a reassessment of the ozone standard. Maine anticipates that EPA may tighten the standard.

#### QUESTIONS:

Board member Nancy Ziegler expressed a desire to take time to review the handouts and ask questions of staff at a future meeting.

Retirements at the DEP: Commissioner Littell announced the list of employees who are leaving the Department through retirement. Dennis Merrill, water enforcement; Jim Sohns, water compliance; Don Albert, water; Jim Pray, UST; Rita Raynes, BAQ office specialist; and Deb Garrett, Deputy Commissioner. The Department is working on obtaining waivers to hire some of these now vacant positions that are funded with dedicated revenues.

Board member M. Wing Goodale suggested that the Board may be interested in a briefing on the recommendations by the Ocean Energy Task Force, noting topics such as off-shore wind and tidal etc.

*Commissioner Littell advised that the Department would coordinate a briefing for the Board at the close of the Task Force's work.*

Board member Elizabeth Ehrenfeld noted the Department's approval of the Record Hill wind power project in the report from today's materials and asked if an appeal had been filed.

*Commissioner Littell confirmed that the permit approval for the Record Hill wind power project in Roxbury has been appealed.*

Board member Nancy Ziegler asked if the 2016 timeframe for Maine's off-shore wind power initiative was realistic given the ongoing work of the Ocean Energy Task Force and recent news about trade meetings over seas.

*Commissioner Littell acknowledged that the 2016 target represented a tight timeframe. He noted that the Governor and the University of Maine are very interested in testing for deep water wind sites in Maine. Most entities who are interested in developing this type of project know that Maine is interested in this market. Research into funding to support this initiative is on-going.*

Board member M. Wing Goodale noted that there are currently 7 sites in Maine that are being considered which will be the topic of public hearings.

*Commissioner Littell added that the State Planning Office is taking the lead on the siting matter. The Department of Conservation has a wind energy information page which includes a map of the areas being considered.*

**B. COMMENTS FROM THE BEP CHAIR:** NONE

**C. EXECUTIVE ANALYST COMMENTS:** None

**D. BOARD CALENDAR:** Reviewed.

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** No questions.

**F. EXECUTIVE SESSION:** None

## **II. CONSENT AGENDA ITEMS:**

The Board voted (7-0-0-3) on a motion to approve consent agenda items 1, 2, and 3 as presented.

The vote was taken pursuant to 38 M.R.S. §341-D(1-B).

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members P. Andrews Nixon, Matt Scott, and Lissa Widoff were absent.*

1. ROBERT and DIANA MARTIN, Raymond – Administrative Consent Agreement (BLWQ – Land)
2. GERALD L. WOOD & SON, LLC, Machiasport – Administrative Consent Agreement (BLWQ – Land)
3. STARKEY FORD, INC., York – Administrative Consent Agreement (BAQ)

## **III. Regular Agenda**

1. CHAPTER 583 NUTRIENT CRITERIA FOR FRESH SURFACE WATERS / NEW (request to terminate rulemaking)

Staff: Andy Fisk, Director, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to grant the Department's request to terminate rulemaking for draft proposed Chapter 583 Nutrient Criteria For Freshwater Surface Waters, which proposed to establish numeric criteria for nutrient enrichment for interpreting existing water quality standards for Class AA, A, B, C, and GPA surface waters. Following stakeholder meetings, the Department plans to re-initiate rulemaking. The vote was taken pursuant to 38 M.R.S. sections 341-D(1-B), 464, 465, and 465-A.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members P. Andrews Nixon, Matt Scott, and Lissa Widoff were absent.*

2. CHAPTER 305 PERMIT-BY-RULE / AMENDMENTS to Section 10 Stream Crossings (post to public hearing)

Staff: Michael Mullen, Bureau of Land and Water Quality

The Board voted (7-0-0-3) on a motion to post to public hearing draft proposed amendments to Chapter 305, Section 10 Stream Crossings. The proposed amendments will require new crossings to achieve natural stream flow for water courses to provide passage for fish and other aquatic organisms. A November 5, 2009 public hearing is anticipated and November 20, 2009 was the established deadline for submission of written public comment. The vote was taken pursuant to 38 M.R.S. sections 341-D(1-B) and 480 A-FF and P.L. 2009 Chapter 460.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, Frank Woodard, and Nancy Ziegler voted to support the motion. Board members P. Andrews Nixon, Matt Scott, and Lissa Widoff were absent.*

3. GOVERNMENT EVALUATION ACT REVIEW, Title 3 M.R.S., Chapter 35 – Program Evaluation Report to Natural Resources Committee (discussion)

Staff: Cynthia S. Bertocci, Board Executive Analyst

The Board's Executive Analyst lead board members in a a review of the draft proposed evaluation report. Board consensus was for staff to update the report and submit it to the Chair for final review and approval.

*Next Regular Meeting –Thursday, October 15, 2009 – Holiday Inn/Ground Round*